

SENATE MOTION

MR. PRESIDENT:

I move that Engrossed House Bill 1004 be amended to read as follows:

- 1 Page 99, between lines 12 and 13, begin a new paragraph and insert:
- 2 "SECTION 97. IC 6-7.5 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE
- 4 JANUARY 1, 2003]:
- 5 **ARTICLE 7.5. COAL SEVERANCE TAX**
- 6 **Chapter 1. Definitions**
- 7 **Sec. 1. The definitions in this chapter apply throughout this**
- 8 **article.**
- 9 **Sec. 2. "Coal" includes any material composed predominantly**
- 10 **of hydrocarbons in a solid state.**
- 11 **Sec. 3. "Department" refers to the department of state revenue.**
- 12 **Sec. 4. "Economic interest" refers to the economic interest**
- 13 **required by Internal Revenue Code Section 611, in effect on**
- 14 **December 31, 1977, entitling the taxpayer to a depletion deduction**
- 15 **for income tax purposes.**
- 16 **Sec. 5. "Gross value" refers to gross income from property as**
- 17 **defined in Section 613(c) of the Internal Revenue Code and United**
- 18 **States Department of Treasury Regulations 1.613-3 and 1.613-4, as**
- 19 **in effect on December 31, 1977.**
- 20 **Sec. 6. "Related party" means two (2) or more persons,**
- 21 **organizations, or businesses owned or controlled directly or**
- 22 **indirectly by the same interest.**
- 23 **Sec. 7. "Reporting period" means the period in which each**
- 24 **taxpayer shall compute the taxpayer's tax liability and remit the**
- 25 **tax due to the department.**
- 26 **Sec. 8. "Severance" refers to the physical removal of coal from**
- 27 **the earth.**
- 28 **Sec. 9. "Taxpayer" includes a pass through entity.**
- 29 **Sec. 10. "Ton" means a short ton of two thousand (2,000)**
- 30 **pounds.**
- 31 **Chapter 2. Coal Severance Tax**
- 32 **Sec. 1. (a) As used in this chapter, "processing" includes the**

1 following treatments to coal:

- 2 (1) Cleaning.
- 3 (2) Breaking.
- 4 (3) Dust allaying.
- 5 (4) Freeze prevention.
- 6 (5) Loading and unloading.
- 7 (6) Sizing.

8 (b) Processing does not include:

9 (1) an act performed by a final consumer if:

10 (A) the consumer is not a related party to the person who
11 severed or processed the coal; and

12 (B) the act is performed at the site where the coal is
13 consumed for the purpose of generating electricity; or

14 (2) the loading or unloading for shipment of coal that has not
15 been severed or treated in Indiana.

16 Sec. 2. As used in this chapter, "registered taxpayer" refers to
17 a taxpayer who holds a valid coal tax certificate of registration
18 under IC 6-7.5-4 during the period in which the taxpayer's coal is
19 sold.

20 Sec. 3. (a) A coal severance tax is imposed on each taxpayer
21 engaged in severing or processing coal in Indiana. Except as
22 provided in subsection (c), the coal severance tax is imposed at the
23 rate of four and five-tenths percent (4.5%) of the gross value of all
24 coal severed or processed during a reporting period.

25 (b) Each taxpayer shall report the gross value of the coal that
26 the taxpayer severed or processed during the preceding month at
27 the time and in the manner prescribed by the department.
28 However, the department may authorize a quarterly reporting
29 period.

30 (c) This subsection does not apply to a taxpayer who only
31 processes coal. The minimum tax for a reporting period is
32 determined by multiplying the total number of tons severed during
33 the reporting period by fifty cents (\$0.50).

34 Sec. 4. (a) Gross value is reported as follows:

35 (1) If the coal is severed or processed, or both, and sold during
36 a reporting period, gross value equals the amount received or
37 receivable by the taxpayer.

38 (2) If the coal is severed or processed, or both, but not sold
39 during a reporting period, the gross value is determined as
40 follows:

41 (A) If the coal is to be sold under the terms of an existing
42 contract, the contract price is used to compute gross value.

43 (B) If no contract exists, the fair market value, for the
44 grade and quality of the coal is used to compute gross
45 value.

46 (3) If a transaction involves related parties, gross value is the
47 amount received or receivable from the first noncontrolled
48 sale by the related parties. However, if coal is sold to a related
49 party for consumption, gross value is an amount not less than
50 the fair market value for coal of similar grade and quality.

51 (4) In the absence of a sale, gross value is the fair market
52 value for coal of a similar grade and quality.

(5) If severed coal is purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the registered taxpayer actually severing the coal.

(6) If severed coal is purchased for the purpose of processing and consumption, the gross value is the fair market value of processed coal of similar grade and quality reduced by the amount paid or payable to the registered taxpayer actually severing the coal.

(b) Gross value may not be reduced by any taxes, including the tax imposed under this chapter, royalties, sales commissions, or other expenses.

Sec. 5. If a contract, either written or oral, is entered into by a person, organization, or business that is engaged to mine or process the coal but does not obtain title to or have an economic interest in the coal, the party that owns the coal or has an economic interest in the coal is the taxpayer.

Sec. 6. A party who receives only an arm's length royalty is not considered to have an economic interest.

Sec. 7. Notwithstanding section 3 of this chapter, the severance tax for coal used for burning solid waste is limited to the lesser of:

- (1) fifty cents (\$0.50) per ton; or
- (2) four percent (4%) of the selling price per ton.

Chapter 3. Determination of Taxable Gross Value of Severed Coal

Sec. 1. As used in this chapter, "direct costs of processing coal" includes the following:

- (1) Depreciation.
- (2) Equipment rental.
- (3) Fee processing.
- (4) Fuel.
- (5) Labor and associated expense.
- (6) Maintenance.
- (7) Refuse disposal.

Sec. 2. (a) As used in this chapter, "direct costs of severing coal" includes the following:

- (1) Contract mining.
- (2) Cost depletion.
- (3) Depreciation.
- (4) Development.
- (5) Equipment rental.
- (6) Explosives.
- (7) Fuel.
- (8) Labor and associated expenses.
- (9) Maintenance.
- (10) Reclamation.
- (11) Royalties that are based on tons severed.
- (12) Wheelage.

(b) The direct costs of severing coal do includes transportation

1 expenses contained within contract mining.

2 Sec. 3. As used in this chapter, "overhead costs" includes the
3 following:

- 4 (1) Commissions.
- 5 (2) Freight yard and siding expense.
- 6 (3) General expenses.
- 7 (4) General insurance and supervision.
- 8 (5) General office expense.
- 9 (6) Idle time expense.
- 10 (7) Inventory adjustments.
- 11 (8) Mine closing expense.
- 12 (9) Officers' salaries.
- 13 (10) Percentage depletion.
- 14 (11) Quality analysis.
- 15 (12) Scale and weighman's expense.
- 16 (13) Transportation expense.
- 17 (14) Taxes including sales, coal severance, property,
18 franchises, and state income taxes.
- 19 (15) All other expenses that are not directly attributable to
20 severing or processing coal.

21 Sec. 4. A taxpayer that severs coal in Indiana and partially or
22 wholly processes the coal outside of Indiana, or severs coal outside
23 of Indiana and partially or wholly processes the coal in Indiana,
24 shall determine and report the gross value of the coal. The taxable
25 portion of the gross value of the coal equals the following:

26 STEP ONE: Determine the direct cost of severing or
27 processing the coal in Indiana.

28 STEP TWO: Determine the direct cost of severing or
29 processing the coal outside of Indiana.

30 STEP THREE: Add the amounts determined in STEP ONE
31 and STEP TWO.

32 STEP FOUR: Divide the amount determined in STEP ONE
33 by the amount determined in STEP THREE.

34 STEPFIVE: Multiply the amount determined in STEP FOUR
35 by the gross value of the coal.

36 Sec. 5. A taxpayer that determines taxable gross value under
37 section 4 of this chapter shall submit supporting computation and
38 classifications of cost with each severance tax return. However, the
39 department may authorize the taxpayer to submit the supporting
40 information on a basis other than monthly.

41 Chapter 4. Certificate of Registration and Administration

42 Sec. 1. (a) A taxpayer engaged in severing or processing coal
43 shall file an application for a certificate of registration on a form
44 prescribed by the department.

45 (b) Each application must be signed by the taxpayer or an agent
46 of the taxpayer. If the taxpayer is a partnership or association, the
47 application must be signed by a member. If the taxpayer is a
48 corporation, the application must be signed by an executive officer
49 or other person specifically authorized by the corporation to sign
50 the application.

1 **Sec. 2. A taxpayer must submit a severance tax return on a form**
 2 **prescribed by the department before the twentieth day of the**
 3 **month after the reporting period in which coal is severed or**
 4 **processed. The taxpayer must submit the amount of severance tax**
 5 **due with the severance tax return. The taxpayer must submit a**
 6 **return for each reporting period even though there may be no**
 7 **severance tax liability.**

8 **Sec. 3. If a taxpayer fails to comply with the provisions of this**
 9 **chapter or a rule adopted under this chapter, the department may**
 10 **suspend or revoke the taxpayer's certificate of registration.**

11 **Sec. 4. A taxpayer, including an officer of a corporation, who**
 12 **severs or processes coal in Indiana without obtaining a certificate**
 13 **of registration, or after a certificate of registration has been**
 14 **revoked, commits a Class B misdemeanor.**

15 **Sec. 5. (a) The department may authorize the taxpayer**
 16 **processing the coal to report and pay the tax that would be due**
 17 **from the taxpayer severing the coal.**

18 **(b) An authorization under subsection (a) must be in the form**
 19 **of an agreement executed by the taxpayer processing the coal, the**
 20 **taxpayer severing the coal, and the department. The agreement**
 21 **must be on a form prescribed by the department.**

22 **(c) The agreement must be signed by the taxpayer and the**
 23 **commissioner of the department. If the taxpayer is a partnership**
 24 **or association, the application must be signed by a member. If the**
 25 **taxpayer is a corporation, the application must be signed by an**
 26 **executive officer or other person specifically authorized by the**
 27 **corporation to sign the application.**

28 **(d) The agreement may be terminated by a party after thirty**
 29 **(30) days written notice to the other parties. However, the**
 30 **department may terminate the agreement immediately upon**
 31 **written notice to the other parties if either the taxpayer severing**
 32 **the coal or the taxpayer processing the coal fails to comply with the**
 33 **terms of the agreement.**

34 **Sec. 6. (a) The department shall provide to all registered**
 35 **taxpayers that sell severed or processed coal that will subsequently**
 36 **be claimed as a reduction from gross value for purchased coal**
 37 **under IC 6-7.5-2-4(5) a certificate prescribed by the department**
 38 **for the processor of the coal to verify the processor's reduction**
 39 **from gross value for purchased coal.**

40 **(b) If a processor purchases coal that has been severed outside**
 41 **of Indiana, the processor shall obtain a certificate from the person**
 42 **severing the coal on a form prescribed by the department to verify**
 43 **the purchased coal.**

44 **Sec. 7. (a) A reduction for purchased coal may not be allowed**
 45 **for purchases of coal originating from persons severing coal in**
 46 **Indiana who have not registered to report and pay the tax imposed**
 47 **under this article.**

48 **(b) A reduction for purchased coal may not be allowed for**
 49 **purchases of coal that cannot be traced to the person who severed**
 50 **the coal outside of Indiana.**

1 **Sec. 8.** The department shall adopt rules under IC 4-22-2 to
2 implement this article.

3 **Chapter 5. Payment of Tax**

4 **Sec. 1.** (a) Each taxpayer charged with the duty to file reports
5 and pay the coal severance tax imposed under this article shall post
6 a cash or corporate surety bond in an amount prescribed by the
7 department.

8 (b) The department may bring an action for a restraining order
9 or a temporary or permanent injunction to restrain or enjoin the
10 taxpayer's business until the bond is posted. The department may
11 bring the action in the Marion county circuit Court or in the circuit
12 court of the county in which the taxpayer's business is located.

13 **Sec. 2 .** The department may suspend or revoke a taxpayer's
14 certificate of registration if the taxpayer fails to comply with the
15 provisions of this chapter.

16 **Sec. 3.** (a) If a taxpayer:

17 (1) fails to pay the full amount of tax imposed under this
18 article as shown on the taxpayer's return by the due date for
19 the return or for the payment;

20 (2) fails to report the tax due under this article;

21 (3) falsifies a return required under this article; or

22 (4) incurs a deficiency upon the determination of the
23 department;

24 the taxpayer is subject to a penalty and interest on the unpaid tax.

25 (b) Interest applies at the rate established in IC 6-8.1-10-1 from
26 the date the tax becomes delinquent until the date the tax is paid.

27 (c) A taxpayer described in subsection (a) is subject to a penalty
28 in an amount determined by the department under IC 6-8.1-10.

29 **Sec. 4.** (a) Notwithstanding any other provisions of this article,
30 the president, vice president, secretary, treasurer, or other person
31 holding an equivalent corporate office of a corporation subject to
32 the provisions of this article shall be personally liable, jointly and
33 severally, for the tax imposed under this article.

34 (b) The following events do not discharge the personal liability
35 of an officer described in subsection (a):

36 (1) The dissolution of the corporation.

37 (2) The withdrawal of the corporation from Indiana.

38 (3) The officer's cessation of holding office.

39 (c) The personal liability applies to each person holding
40 corporate office at the time the taxes become due.

41 (d) A person that does not have authority in the management of
42 the business or financial affairs of the corporation at the time the
43 taxes are imposed may not be held personally liable for the tax
44 imposed under this article.

45 **Sec. 5.** A taxpayer that fails to:

46 (1) file returns required under this article;

47 (2) remit the tax due under this article; or

48 (3) falsifies or alters a certificate or other form required
49 under this article;

50 commits a Class B misdemeanor.

1 **Chapter 6. Use of Tax**

2 **Sec. 1. (a) A special account within the state general fund is**
 3 **established for taxes collected under this article. The department**
 4 **shall transfer the taxes that are collected under this article each**
 5 **month to the account.**

6 **(b) The treasurer of state shall distribute the money in the**
 7 **account to each county in which coal is severed or processed. The**
 8 **treasurer of state shall distribute to each county an amount**
 9 **proportional to the amount of severance tax imposed in the county.**

10 **(c) The treasurer shall hold all amounts of collections received**
 11 **under subsection (a) during a particular month and shall distribute**
 12 **the amounts required under subsection (b) on the fifth day of the**
 13 **immediately following month.**

14 **(d) Money in this account at the end of a state fiscal year does**
 15 **not revert to the state general fund.**

16 **Sec. 2. A distribution from the account established under section**
 17 **1 of this chapter shall be made by warrants issued by the auditor**
 18 **of state to the treasurer of state ordering the appropriate**
 19 **payments.**

20 **Sec. 3. A county treasurer shall deposit money received under**
 21 **this chapter in the county general fund. Money received under this**
 22 **chapter may be used to pay expenses incurred in the maintenance**
 23 **of county highways."**

24 Page 102, between lines 8 and 9, begin a new paragraph and insert:
 25 "SECTION 102. IC 8-18-8-5 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 5. (a) Except as
 27 provided in subsection (c), all expenses incurred in the maintenance of
 28 county highways shall be paid out of funds from the gasoline tax,
 29 special fuel tax, **coal severance tax**, and the motor vehicle registration
 30 fees that are paid to the counties by the state, and from funds derived
 31 from the:

- 32 (1) county motor vehicle excise surtax;
- 33 (2) county wheel tax;
- 34 (3) county adjusted gross income tax;
- 35 (4) county option income tax;
- 36 (5) riverboat admission tax (IC 4-33-12); or
- 37 (6) riverboat wagering tax (IC 4-33-13).

38 (b) Except as provided in subsection (c), no ad valorem property tax
 39 may be levied by any county for the maintenance of county highways,
 40 except in an emergency and by unanimous vote of the county fiscal
 41 body.

42 (c) The county fiscal body may appropriate money from the county

- 1 general fund to the county highway department to pay for employees'
- 2 personal services.".
- 3 Renumber all SECTIONS consecutively.
(Reference is to EHB 1004 as printed February 22, 2002.)

Senator WATERMAN